

Approved:



Benjamin M. Burkett
Assistant United States Attorney

Before:

THE HONORABLE ROBERT W. LEHRBURGER
United States Magistrate Judge
Southern District of New York

23 MAG 6220

UNITED STATES OF AMERICA

v.

ODAIN McEARSON,

Defendant.

SEALED COMPLAINT

Violations of 18 U.S.C. §§ 1951 and 2

COUNTIES OF OFFENSE:
BRONX & WESTCHESTER

SOUTHERN DISTRICT OF NEW YORK, ss.:

TOM FORD, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE
(Conspiracy to Commit Hobbs Act Robbery)

1. In or about March 2023, in the Southern District of New York and elsewhere, ODAINE McEARSON, the defendant, and others known and unknown, knowingly combined, conspired, confederated, and agreed together and with each other to commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), and would and did thereby obstruct, delay, and affect commerce and the movement of articles and commodities in commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), to wit, McEARSON and others conspired to commit an armed robbery of a fried chicken restaurant in the Bronx, New York, on or about March 23, 2023, and a robbery of a gas station in Elmsford, New York, also on or about March 23, 2023.

(Title 18, United States Code, Section 1951.)

COUNT TWO
(Attempted Hobbs Act Robbery)

2. On or about March 23, 2023, in the Southern District of New York and elsewhere, ODAINE McEARSON, the defendant, did knowingly attempt to commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), and did thereby obstruct, delay, and affect commerce and the movement of articles and commodities in commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), and aided and abetted the same, to wit, McEARSON attempted to commit, and aided and abetted the attempted commission of, an

armed robbery of a fried chicken restaurant located at 4400 White Plains Road in the Bronx, New York.

(Title 18, United States Code, Sections 1951 and 2.)

COUNT THREE
(Hobbs Act Robbery)

3. On or about March 23, 2023, in the Southern District of New York and elsewhere, ODAINE McEARSON, the defendant, knowingly committed robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), and thereby obstructed, delayed, and affected commerce and the movement of articles and commodities in commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), and aided and abetted the same, to wit, McEARSON committed, and aided and abetted the commission of, a robbery of a gas station located at 135 North Central Avenue in Elmsford, New York.

(Title 18, United States Code, Sections 1951 and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

4. I am a Special Agent with the FBI, and I have been personally involved in the investigation of this matter. I base this affidavit on that experience and on my training, my conversations with other law enforcement officials and other individuals, and my examination of various reports, records, and recordings, including surveillance video, cell site location data, license plate reader records, credit reporting records, and New York Department of Motor Vehicle (“DMV”) records. Because this affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all the facts I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

The March 23, 2023 Attempted Armed Robbery
of a Fried Chicken Restaurant

5. Based on my participation in this investigation, my conversations with other law enforcement officials and other individuals, and my review of surveillance video, I have learned, among other things, the following:

a. As captured by surveillance video, on or about March 23, 2023, at approximately 1:05 a.m., two individuals (“Robber-1” and “Robber-2”) entered a fried chicken restaurant located at 4400 White Plains Road in the Bronx, New York (the “Restaurant”), and attempted to rob the Restaurant (the “Attempted Armed Robbery”).

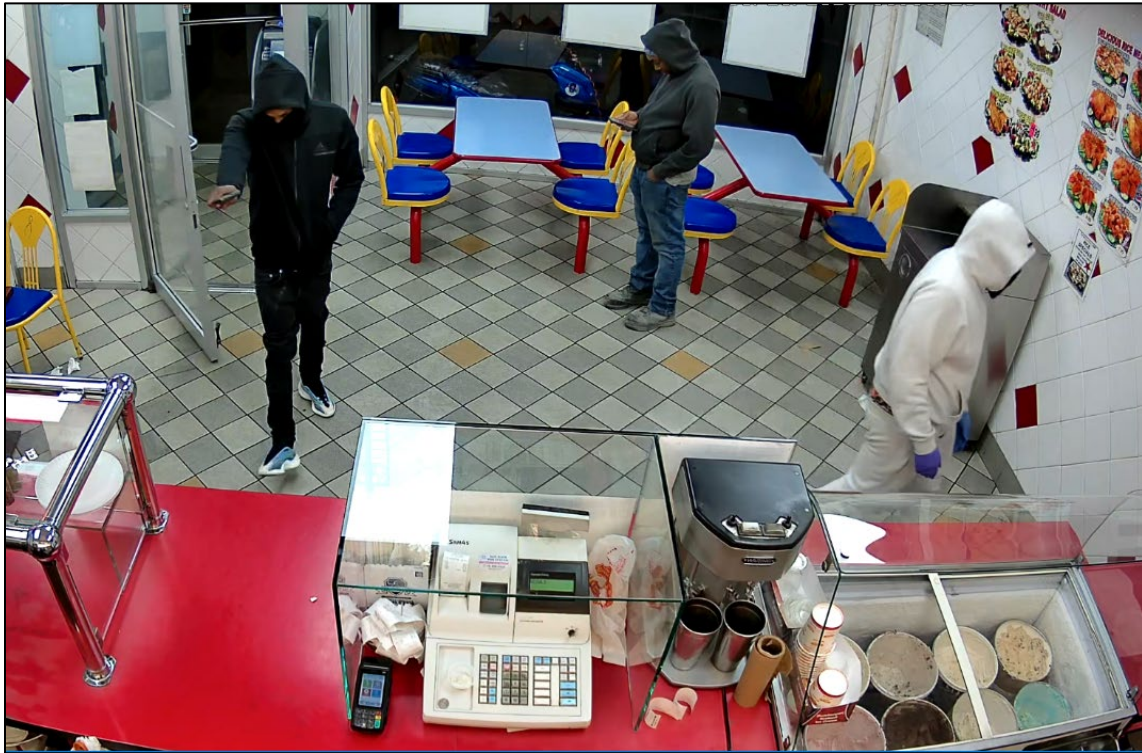
b. As captured by surveillance video from inside the Restaurant, Robber-1 wore blue or purple gloves, white sneakers, and a white tracksuit, with the tracksuit’s pants lowered such that a pair of boxer-briefs featuring a multi-colored pattern was visible. Robber-1 wore a black mask covering most of his face. Still images of Robber-1, as captured by surveillance video from inside the Restaurant, are below.



c. As captured by surveillance video from inside the Restaurant, Robber-2 wore black jeans and a black hoodie, with a pair of gray sneakers featuring distinctive blue lines. Robber-2 wore a black mask covering his face from the nose down. Still images of Robber-2, as captured by surveillance video from inside the Restaurant, are below.



d. As captured by surveillance video from inside the Restaurant, as Robber-1 and Robber-2 entered the Restaurant, Robber-2 pulled what appears to be a firearm from the pocket of his hoodie, seemingly cocked the apparent firearm, and waved the apparent firearm in the direction of the Restaurant's cashier, who was behind a counter, as Robber-1 and Robber-2 approached the counter. A still image depicting Robber-1 and Robber-2 as they approached the counter, as captured by surveillance video from inside the Restaurant, is below.



e. As captured by surveillance video from inside the Restaurant, Robber-1 walked behind the Restaurant's counter and began trying to open the Restaurant's cash register. Robber-1 repeatedly told the Restaurant's cashier, who had fled and hidden in the Restaurant's freezer, to open the cash register. Robber-1 began bashing the cash register with his closed fist, breaking the cash register into pieces. At approximately 1:07 a.m., Robber-1 and Robber-2 fled the Restaurant without obtaining any United States currency.

The March 23, 2023, Gas Station Robbery

6. Based on my participation in this investigation, my conversations with other law enforcement officials and other individuals, and my review of surveillance video, I have learned, among other things, the following:

a. As captured by surveillance video, on or about March 23, 2023, at approximately 1:37 a.m., Robber-1 and Robber-2 entered a BP gas station located at 135 North Central Avenue in Elmsford, New York (the "Gas Station"), where they took approximately \$500 in United States currency from the Gas Station's cash registers (the "Gas Station Robbery").

b. As captured by surveillance video from inside the Gas Station, Robber-1 walked behind the Gas Station's counter where he took United States currency from two cash registers atop the Gas Station's counter. Robber-2 stood near the Gas Station's door in a manner indicating, based on my training and experience, that Robber-2 was serving as a lookout during the Gas Station Robbery. An image depicting Robber-1 taking cash from one of the Gas Station's cash registers while Robber-2 stands lookout, as captured by surveillance video from inside the Gas Station, is below.



c. As captured by surveillance video from inside the Gas Station and as depicted in the above image, an employee of the Gas Station was present behind the Gas Station's counter during the Gas Station Robbery. The Gas Station employee did not give Robber-1 or Robber-2 permission to take any cash from the Gas Station's registers.

d. As captured by surveillance video from inside the Gas Station, Robber-1 and Robber-2 fled the Gas Station at approximately 1:39 a.m.

e. Based on my comparison of the clothing worn by the individuals who carried out the Gas Station Robbery with the clothing worn by the individuals who carried out the Attempted Armed Robbery, I believe that the individuals who carried out the Gas Station Robbery are the same individuals who carried out the Attempted Armed Robbery — *i.e.*, Robber-1 and Robber-2.

i. Specifically, as reflected in the images below, Robber-1 can be seen wearing the same white tracksuit and boxer-briefs featuring a multi-colored pattern in both the surveillance video from inside the Restaurant (left image) and the surveillance video from inside the Gas Station (right image).



ii. And, as reflected in the images below, Robber-2 can be seen wearing the same black jeans, black hoodie, and gray sneakers featuring distinctive blue lines in both the surveillance video from inside the Restaurant (left image) and the surveillance video from inside the Gas Station (right image).



Identification of ODAINE McEARSON

7. Based on my participation in this investigation, my conversations with other law enforcement officials, and my examination of surveillance video, cell site location data, license plate reader records, credit reporting records, and New York Department of Motor Vehicle (“DMV”) records, I have learned, among other things, the following:

a. As captured by surveillance video from the vicinity of 4400 White Plains Road, on or about March 23, 2023, at approximately 1:01 a.m.¹ — *i.e.*, the morning of the Attempted Armed Robbery and the Gas Station Robbery — Robber-1 and Robber-2, together with a third individual (“Robber-3”), arrived at the vicinity of 4400 White Plains Road in a white Hyundai Veloster with a dark-colored “racing stripe” painted on top of the vehicle’s hood and an emblem of some sort visible in the center of the vehicle’s hood (the “White Hyundai”). A still image of the White Hyundai, as captured by surveillance video from the vicinity of 4400 White Plains Road, is below.



b. As captured by surveillance video from the vicinity of 4400 White Plains Road, shortly after the White Hyundai arrived in the vicinity of 4400 White Plains Road, Robber-1 exited the White Hyundai via the passenger’s-side front-door and stood nearby the White Hyundai until around approximately 1:02 a.m., when Robber-2 exited the White Hyundai from the driver’s-side front-door. Shortly after Robber-2 exited the White Hyundai, Robber-3 climbed from the White Hyundai’s back seat into the driver’s seat. Shortly thereafter, Robber-1 and Robber-2 departed on foot in the direction of the Restaurant, where, as described above, Robber-1 and Robber-2 carried out the Attempted Robbery at approximately 1:05 a.m. Robber-3 remained in the White Hyundai.

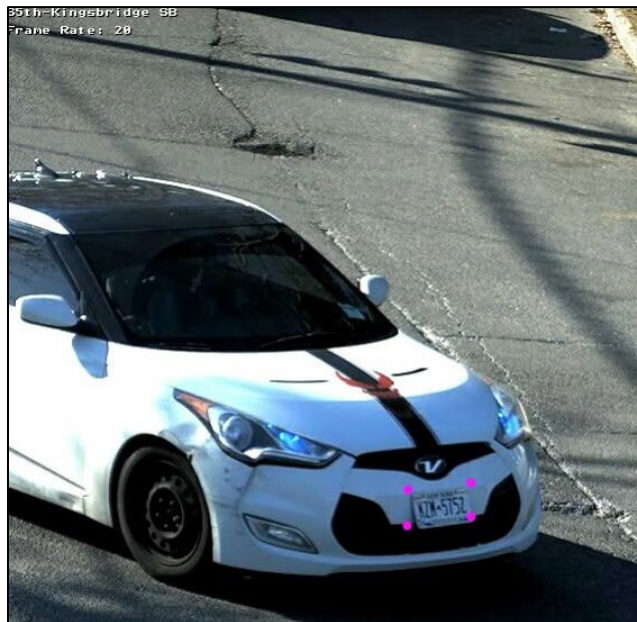
¹ Based on my conversations with other law enforcement officers, I have learned that the time depicted in the surveillance video from the vicinity of 4400 White Plains Road referenced herein is approximately four hours, thirty-one minutes, and forty-seven seconds slow. The times provided herein have been calculated by adding four hours, thirty-one minutes, and forty-seven seconds to each of the relevant times depicted in the surveillance video from the vicinity of 4400 White Plains Road.

c. As captured by surveillance video from the vicinity of 4400 White Plains Road, at approximately 1:08 a.m., Robber-1 and Robber-2 returned to the White Hyundai, running on foot toward the White Hyundai from the direction of the Restaurant. At this time, Robber-3 was still in the White Hyundai's driver's seat. Robber-1 and Robber-2 got into the White Hyundai, and the White Hyundai departed with Robber-3 driving, at approximately 1:08 a.m.

d. DMV records show that a white Hyundai Veloster with New York license plate number KZM5752 is registered to ODAINE McEARSON, the defendant ("McEARSON's Vehicle").

e. License plate reader records show that, on or about March 23, 2023, at approximately 12:51 a.m. — *i.e.*, around 14 minutes before the Attempted Armed Robbery — license plate readers captured McEARSON's Vehicle at the intersection of Bronx River Road and McLean Avenue, which is approximately six blocks away from the Restaurant, traveling eastbound into the Bronx — *i.e.*, in the direction of the Restaurant.

f. License plate reader records show that, on or about March 19, 2023, license plate readers captured a still image of McEARSON's Vehicle (the "LPR Image"). As shown in the LPR Image, McEARSON's Vehicle has a black racing stripe on its hood and a red emblem or sticker in the shape of what appears to be a pair of wings in the center of its hood. The LPR Image, as captured by license plate readers, is below.



g. Based on my comparison of the surveillance footage from the vicinity of 4400 White Plains Road around the time of the Attempted Armed Robbery depicting the White Hyundai with the LPR Image depicting McEARSON's Vehicle, and, particularly, (1) that the White Hyundai and McEARSON's Vehicle are both white Hyundai Velosters; (2) that the dark-colored racing stripe on the hood of the White Hyundai appears similar to the black racing stripe on the center of McEARSON's Vehicle; and (3) that the shape of the emblem in the center of the White Hyundai's hood is consistent in shape with the red emblem in the center of the hood of

McEARSON's Vehicle, I believe that McEARSON's Vehicle is the same vehicle as the White Hyundai used in connection with the Attempted Armed Robbery.

h. Based on my conversations with other law enforcement officers, I have learned that, on or about April 13, 2023, law enforcement officers conducted a lawful traffic stop of McEARSON's Vehicle. At the time of the traffic stop, ODAINE McEARSON, the defendant, was driving the vehicle.²

8. Based on my review of publicly available credit reporting records concerning ODAINE McEARSON, the defendant, I have learned that, at least as of on or about November 2022, a certain cellphone number ("Cellphone Number-1") was listed as McEARSON's cellphone number in certain credit reporting records.

9. Based on my review of publicly available court records, I know that ODAINE McEARSON, the defendant, is currently serving a term of supervised release in connection with a criminal case in the United States District Court for the Southern District of New York.

10. Based on my conversations with a United States Probation Officer (the "Probation Officer") of the United States Probation Office for the Southern District of New York ("Probation"), I have learned that Cellphone Number-1 is listed as the phone number on file with Probation for ODAINE McEARSON, the defendant, and that McEARSON used that number to participate in a phone call with Probation on or about July 21, 2023.

11. Based on the foregoing, I believe that ODAINE McEARSON, the defendant, was the user of the cellphone to which Cellphone Number-1 is assigned ("McEARSON's Cellphone") at or around the time of the Attempted Armed Robbery and the Gas Station Robbery.³

² Based on my conversations with other law enforcement officers, I have learned that, following the stop of McEARSON's Vehicle, law enforcement officers brought McEARSON to the 47th Precinct, where McEARSON agreed to speak with law enforcement officers, but did not appear to be advised of his *Miranda* rights. Based on my conversations with other law enforcement officers and my review of video footage showing McEARSON's conversation with law enforcement officers, I have learned that McEARSON told the officers, in substance and in part, that he did not remember whether he had his vehicle on or about March 23, 2023, but that he did not think so; that he sometimes rents his vehicle out; that he did not remember to whom he had rented his vehicle on March 23, 2023; and that he did not remember where he was on March 23, 2023. The law enforcement officers showed McEARSON still images, as captured by surveillance video, depicting Robber-1 and Robber-2 carrying out the Attempted Armed Robbery. McEARSON stated, in substance and in part, that neither Robber-1 nor Robber-2 looked like an individual to whom McEARSON might have rented his vehicle. When one of the law enforcement officers said, in substance and in part, that McEARSON looked similar to Robber-2, McEARSON stated, in substance and in part, that he was not Robber-2.

³ Based on my review of cellphone subscriber records, I know that cellphone subscriber records associated with Cellphone Number-1 list an individual other than McEARSON as the financially liable party for Cellphone Number-1.

12. Based on my conversations with the Probation Officer, I know that a certain address is listed with Probation as the primary address for ODAINE McEARSON, the defendant (“McEARSON’s Address”).

13. Based on my review of historical cell site data pertaining to McEARSON’s Cellphone obtained pursuant to a judicially authorized search warrant, I know that:

a. McEARSON’s Cellphone was located in the vicinity of 4400 White Plains Road — *i.e.*, the address of the Restaurant — at approximately 12:50 a.m. on or about March 23, 2023 — *i.e.*, approximately 15 minutes before the Attempted Armed Robbery occurred.

b. Later on or about March 23, 2023, at approximately 4:14 a.m., McEARSON’s Cellphone was located in the vicinity of McEARSON’s Address, where McEARSON’s Cellphone remained for the morning.

14. Based on the foregoing, including that Robber-2 was the one originally driving the White Hyundai when it arrived in the vicinity of the Restaurant on or about March 23, 2023, and that ODAINE McEARSON, the defendant, is the owner of the White Hyundai, along with my comparison of Robber-2’s build and features, as captured by the surveillance video described above, with McEARSON’s build and features, as reflected in images from law enforcement databases, I believe that McEARSON is Robber-2.

WHEREFORE, I respectfully request that a warrant be issued for the arrest of ODAINE McEARSON, the defendant, and that he be imprisoned or bailed, as the case may be.

S/ by the Court with permission

TOM FORD

Special Agent

Federal Bureau of Investigation

Sworn to before me on this 29th day of August, 2023.



THE HONORABLE ROBERT W. LEHRBURGER
United States Magistrate Judge
Southern District of New York